

SENATE BILL 386
By Ketron

AN ACT to amend Tennessee Code Annotated, Title 65
and Title 67, relative to enacting the "Tennessee
Broadband Technology Incentive Act of 2005".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act may be known and shall be cited as the "Tennessee Broadband Technology Incentive Act of 2005".

SECTION 2. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following new subsection:

(g) With respect to the investment in any year by a telecommunications carrier, as defined in 47 U.S.C. §153(44), or a cable operator, as defined in 47 U.S.C. §522(5), or an affiliate of such telecommunications carrier or cable operator, after June 30, 2005, and before July 1, 2015, there shall be allowed a credit against the sum total of the taxes imposed for such year by the Franchise Tax Law, compiled in this part, and by the Excise Tax Law, compiled in part 20 of this chapter.

(1) Such credit shall be an amount equal to:

(A) Ten percent (10%) of the cost of equipment used in the deployment of broadband technologies in Tier Two areas; and

(B) Fifteen percent (15%) of the cost of equipment used in the deployment of broadband technologies in Tier Three areas.

(2) The aggregate credit established by this section taken in any one tax year shall be limited to an amount not greater than fifty percent (50%) of the taxpayer's sum total of tax liabilities, before any other credits have been applied,

imposed by the Franchise Tax Law, compiled in this part, and by the Excise Tax Law, compiled in part 20 of this chapter.

(3) For purposes of this subsection (g):

(A) "Tier One areas" mean counties with a population density of more than or equal to five hundred (500) per square mile of land area according to the latest U.S. Census.

(B) "Tier Two areas" mean counties with a population density of one hundred (100) to five hundred (500) per square mile of land area according to the latest U.S. Census.

(C) "Tier Three areas" mean counties with a population density of less than or equal to one hundred (100) per square mile of land area according to the latest U.S. Census.

(D) "Equipment used in the deployment of broadband technologies" means any equipment capable of being used for or in connection with the transmission of information at a rate, prior to taking into account the effects of any signal degradation, that is not less than one hundred forty-four (144) kilobits per second in at least one direction, including, but not limited to digital equipment, fiber optics and related equipment, provided however, equipment used in the deployment of broadband technologies shall not include copper cable, coaxial cable or analog equipment.

(E) "Affiliate" means any entity that would be treated as related to the respective telecommunications service provider or cable operator under the principles of either Section 267(b) or Section 707(b) of the Internal Revenue Code.

(F) Notwithstanding any law to the contrary, the credit provided in this subsection may be computed by an entity that:

- (i) is organized as a general partnership, and
- (ii) would otherwise qualify for the credit provided in this section.

Such credit shall be computed as if the general partnership were subject to the Franchise Tax Law, compiled in this part, and the Excise Tax Law, compiled in Part 20 of this chapter. With respect to the general partnership tax year during which a credit is so computed, a partner in such general partnership which is subject to franchise or excise tax and that directly holds a first tier ownership interest in such general partnership may take a percentage of such credit against such partner's franchise or excise tax liability in an amount equal to the total amount of such credit for the general partnership multiplied by such partner's percentage interest in the general partnership on the last day of such general partnership tax year which includes the last day of such partner's tax year. The credit passed through from the general partnership to the first tier partner under this section shall, in the hands of the first tier partner, be subject to applicable provisions and limitations otherwise provided by this section; provided however, that in no case shall the credit be taken by a business entity unless it was a partner in the general partnership and subject to franchise or excise tax at the time the credit was earned by the general partnership. In the case of tiered general partnerships, the credit shall be passed through each general partnership tier using the principles described herein, by treating each general

partnership that holds an interest as a partner in such tiered partnership structure as an entity that is subject to franchise and excise tax.

SECTION 3. Tennessee Code Annotated, Section 67-4-2009, is amended by adding the following new subdivision:

(10) With respect to the investment in each year by a telecommunications carrier, as defined in 47 U.S.C. §153(44), or a cable operator, as defined in 47 U.S.C. §522(5), or an affiliated entity of such telecommunications carrier or cable operator, after June 30, 2005, and before July 1, 2015, there shall be allowed annually as a credit against the sum total of the taxes imposed by the Franchise Tax Law, compiled in part 21 of this chapter, and by the Excise Tax Law, compiled in this part.

(A) Such annual credit shall be an amount equal to:

(i) Ten percent (10%) of the cost of equipment used in the deployment of broadband technologies in Tier Two areas; and

(ii) Fifteen percent (15%) of the cost of equipment used in the deployment of broadband technologies in Tier Three areas.

(B) The aggregate credit established by this section taken in any one tax year shall be limited to an amount not greater than fifty percent (50%) of the taxpayer's sum total of tax liabilities, before any other credits have been applied, imposed by the Franchise Tax Law, compiled in this part, and by the Excise Tax Law, compiled in part 20 of this chapter.

(C) For purposes of subsection (10):

(i) "Tier One areas" mean counties with a population density of more than or equal to five hundred (500) per square mile of land area according to the latest U.S. Census.

(ii) “Tier Two areas” mean counties with a population density of one hundred (100) to five hundred (500) per square mile of land area according to the latest U.S. Census.

(iii) “Tier Three areas” mean counties with a population density of less than or equal to one hundred (100) per square mile of land area according to the latest U.S. Census.

(iv) “Equipment used in the deployment of broadband technologies” means any equipment capable of being used for or in connection with the transmission of information at a rate, prior to taking into account the effects of any signal degradation, that is not less than one hundred forty-four (144) kilobits per second in at least one direction, including, but not limited to digital equipment, fiber optics and related equipment, provided however, equipment used in the deployment of broadband technologies shall not include copper cable, coaxial cable or analog equipment.

(v) “Affiliate” means any entity that would be treated as related to the respective telecommunications service provider or cable operator under the principles of either Section 267(b) or Section 707(b) of the Internal Revenue Code.

(vi) Notwithstanding any law to the contrary, the credit provided in this subsection may be computed by an entity that: (i) is organized as a general partnership, and (ii) would otherwise qualify for the credit provided in this section. Such credit shall be computed as if the general partnership were subject to the Franchise Tax Law, compiled in this part, and the Excise Tax Law, compiled in Part 20 of this chapter. With respect

to the general partnership tax year during which a credit is so computed, a partner in such general partnership which is subject to franchise or excise tax and that directly holds a first tier ownership interest in such general partnership may take a percentage of such credit against such partner's franchise or excise tax liability in an amount equal to the total amount of such credit for the general partnership multiplied by such partner's percentage interest in the general partnership on the last day of such general partnership tax year which includes the last day of such partner's tax year. The credit passed through from the general partnership to the first tier partner under this section shall, in the hands of the first tier partner, be subject to applicable provisions and limitations otherwise provided by this section; provided however, that in no case shall the credit be taken by a business entity unless it was a partner in the general partnership and subject to franchise or excise tax at the time the credit was earned by the general partnership. In the case of tiered general partnerships, the credit shall be passed through each general partnership tier using the principles described herein, by treating each general partnership that holds an interest as a partner in such tiered partnership structure as an entity that is subject to franchise and excise tax.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.